IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL REVISION APPLICATION NO.98 OF 2002

Maharashtra Public Service Commission ...Applicant

Vs.

Amrut Kisan Kalukhe & Ors. ...Respondents

CRIMINAL REVISION APPLICATION NO.99 OF 2002

Maharashtra Public Service Commission ...Applicant

Vs.

Amrut Kisan Kalukhe & Ors. ...Respondents

CRIMINAL REVISION APPLICATION NO.100 OF 2002

Maharashtra Public Service Commission ...Applicant

Vs.

Amrut Kisan Kalukhe & Ors. ...Respondents

Shri R.V. More with Shri Pratap V. Patil for the Applicant.
for the Respondent.

CORAM: A. S. OKA, J.
DATE : OCTOBER 27, 2005.

JUDGMENT:

1. As some of the questions in these Criminal Revision Applications are common, this Court by order dated 11th April, 2005 directed that Criminal Revision Application Nos.99 of 2002 and 100 of 2002 shall be heard alongwith Criminal REvision Application No.98 of 2002. By order dated 21st July, 2005 these Revision Applications were ordered to be heard finally by

placing the same on admission board. Before considering submissions made by the Advocate appearing for the parties, it will be necessary to refer to the relevant facts of the case.

2)(a) **CRIMINAL REVISION APPLICATION NO.98 OF 2002**

. This Application is filed by the Maharashtra Public Service Commission which is the original complainant. The Petitioner filed a complaint with the general branch of State C.I.D. At the instance of the Petitioner, an offence was registered against the Respondent Nos.1 and 2 under sections 465, 468, 471, 419, 420 read with section 120-B of the Indian Penal Code. After investigation was completed, chargesheet was filed. The trial proceeded before the learned Metropolitan Magistrate, 8th Court, Mumbai. On 11th June 1993, the learned Magistrate framed charge and recorded the plea of the Accused. Till 02nd December, 1998 evidence of P.W.1 and P.W.2 was recorded. Further evidence of the prosecution was yet to be recorded. On 02nd December, 1998 an Application was made by the Respondent No.2 praying for direction to close the evidence of the prosecution on the basis of the decision of the Apex Court reported in 1998(4) Crimes, Page 53(S.C) (Rajdev Sharma Vs. State of

Bihar). This decision is hereinafter referred to as the case of Rajdeo Sharma-I. The learned Metropolitan Magistrate ordered that evidence of the prosecution stands closed. Consequently, by Judgment and Order dated 29th January, 1999, the learned Metropolitan Magistrate acquitted the Respondent Nos.1 and 2 of the offences alleged aginst them.

2(b) **CRIMINAL REVISION APPLICATION NO.99 OF 2002**

. At the instance of the Petitioner, the Maharashtra Public Service Commission, an offence was registered against the Respondent Nos.1 to 11 under sections 465, 468, 471, 419, 420 read with section 34 of the Indian Penal Code. The learned Additional Chief Metropolitan Magistrate, 37th Court, Mumbai framed charge against the Respondent Nos.1 to 11 on 09th July, 1993 and recorded plea of the accused. On 10th September, 1998 the accused persons submitted an Application for discharge. By impugned order dated 15th January, 1999, the learned Metropolitan Magistrate relying upon the decision of the Apex Court in the case of Rajdeo Sharma-I held that the prosecution has not led evidence within a period of three years from the date on which plea of the accused persons was recorded and therefore, the evidence of

the prosecution will have to be closed. As there was no evidence on record, the learned Judge acquitted the accused persons for want of evidence.

2(c). **CRIMINAL REVISION APPLICATION NO.100 OF 2002**

. On the basis of the complaint by the Petitioner, the Maharashtra Public Service Commission, an offence was registered under section 465, 468, 471, 419, 420 read with section 34 of the Indian Penal Code against the Respondent Nos.1 to 14. On 09th April, 1993 the learned Additional Chief Metropolitan Magistrate, 37th Court, Mumbai framed charge against the accused persons and recorded the plea. An Application was moved by the Respondent No.1 on the basis of the decision of the Apex Court in the case of Rajdeo Sharma-I praying for acquittal. The learned Trial Judge by order dated 15th January, 1999 held that as evidence was not led by the prosecution within a period of three years from the date of recording the plea, the evidence of the prosecution will have to be closed. The learned Judge by the said order acquitted the accused persons for want of evidence.

3. Shri More appearing for the Petitioner in all the three Revision Applications pointed out that the

decision of the Apex Court in the case of Rajdeo Sharma-I was modified by the Apex Court by its subsequent decision reported in 1999 Supreme Court Cases (Cri.) Page 1324 (Rajdev Sharma Vs. State of Bihar) [hereinafter referred to as the decision of Rajdev Sharma (II)]. He submitted that inview of the later decision of the Apex Court of the larger bench reported in AIR 2002 Supreme Court Page 1856 (P.Ramchandra Rao Vs. State of Karnataka) [hereinafter referred to as decision in the caseof P.Ramchandra Rao], the law laid down in the decision in Rajdev Sharma(I) and Rajdev Sharma (II) is no longer a good law. Shri More placed reliance on decision of Division Bench of this Court reported in 2001(2) Maharashtra Law Journal, Page 330 (Narayan Ganpati Vs. State of Maharashtra). In all the three cases, he pointed out the factual aspects with reference to the roznama of the cases and submitted that the accused persons were responsible for protracting the trial by frequently remaining absent and therefore, the court was not obliged to close the prosecution evidence in the prescribed period.

4. The learned Counsel appearing for the Respondents in the Revision Applications submitted that in so far as Revision Application No.98 of 2002

is concerned, there was every justification for the learned Trial Judge to close the evidence of the prosecution as the case was completely covered by the decision of the Apex Court in the case of Rajdev Sharma(I) which was holding the field when the impuned order was passed. It was submitted that in Criminal Revision Application No.98 of 2002, the learned Judge considered the evidence of P.W.1 and P.W.2 and has recorded a finding of fact. He submitted that the order of acquittal in the said case is not based only on the decision of Rajdev Sharma (I) but it is based on consideration of evidence led by the prosecution. He submitted that the delay was only due to default on the part of the prosecution in keeping prosecution witnesses present. The Counsel appearing for the Respondents submitted that in the other two Revision Applications, orders impugned have been passed on the basis of law laid down in the decision of Rajdev Sharma(I) which was holding the field on the date of passing the orders impugned. It was further submitted that there was every justification for the learned Trial Judge to close the prosecution evidence as there was total negligence on the part of the prosecution in commencing the recording of the evidence. He submitted that as no evidence was led within period of three years from the date of recording plea, the Trial

Court was justified in passing the orders impugned.

5. I have considered the oral submissions. I have also considered the written submissions tendered on record by the parties. It will be necessary to refer to the decision of the Apex Court in Rajdev Sharma(I). In paragraph No.16 of the said decision the Apex Court supplemented propositions of law laid down in its earlier decision reported in 1992(1) Supreme Court Cases, Page 225 (Abdul Rehman Antule and Ors. Vs. R.S. Naik & Anr). The said directions given by the Apex Court read thus:

> (i) In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed

to the next step provided by law for the trial of the case.

(ii) In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

(iii) If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the court shall close theprosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next

step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

(iv) But if the inability for completing the prosecution within the aforesaid period is attributable to the conduct of the accused in protracting the trial, no court is obliged to close the prosecution evidence within the aforesaid period in any of the cases covered by clauses(i) to (iii).

(v) Where the trial has been stayed by orders of court or by operation of law such time during which the stay was in force shall be excluded from the aforesaid

> period for closing prosecution evidence. The above directions will bein addition to and without prejudice to the directions issued by this Court in "Common Cause" V. Union of India (1996)(4) SCC 33 as modified by the same bench through the order reported in "Common Cause" a registered Society V. Union of India(1996(6) SCC 775).

The said decision was rendered on 08th October, 1998. The decision in Rajdev Sharma(II) was delivered on 22nd September, 1999. The majority Judgment of the Apex Court in the case of Rajdev Sharma(II) directed that a rider should be added in the directions given in Rajdev Sharma(I). The direction given by the majority decision of the Supreme Court reads thus:

> We are, therefore, inclined to include a rider that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in the main appeal, and the court concerned

> wuold be free to grant such extension if the court considers it necessary in the interest of administration of criminal justice. As we suspended the operation of the judgment from 14.05.1999 till today teh said time of suspension will stand excluded from the aforementioned additional period of one year.

In the decision of the larger bench in the case of P.Ramchandra Rao, the Apex Court held that:

> For all the foregoing reaons, we are of the opinion that in Common Cause case (I)(1996 AIR SCW 2279: AIR 1996 SC 1619 :1996 Cri LJ 2380) (as modified in Common Cause (II) 1997 AIR SCW 290: AIR 1997 SC 1539: 1997 Cri LJ 195 (1998 AIR SCW 3522: AIR 1999 SC 3524: 1998 Cri LJ 4541), the court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:- AIR

1996 SC 1619 :1996 AIR SCW 2279 : 1996 Cri LJ 2380 AIR 1997 SC 1539 : 1997 AIR SCW 290: 1997 Cri LJ 195 AIR 1998 SC 3281 :1998 AIR SCW 3208: 1998 Cri LJ 4596 AIR 1999 SC 3522: 1999 Cri LJ 4541 AIR 1992 SC 1701: 1992 AIR SCW 1872:1992 Cri LJ 2717

(1) The dictum in A.R.Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R.Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is

difficult to foresee all situations and no generalization can be made.

It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits of bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merelyon account of lapse of time, as prescribed by the directions made in Common Cause Case(I), Raj Deo Sharma Case (I) and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant

factors as pointed out in A.R.Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and a mandatorily obliging the court of terminate the same and acquit or discharge the accused. AIR1996 SC 1619 : 1996 AIR SCW 2279 :1196 Crilj 2380 AIR 1998 SC 3281 :1998 : 1998 AIR SCW 3208 : 1998 CriLJ 4596 AIR 1999 SC 3524 : 1999 AIR SCW 3522 : 1998 Cri LJ4541.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial Judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227

of Constitution can be invoked seeking appropriate relief or suitable directions.

In all the three Revision Applications, the orders impugned have been passed in January, 1999. Since the offences under trial in all the three cases were punishable with imprisonment for a period extending seven years, we are concerned in these three cases with directions contained in clause (iii) to (v) of paragraph No.16 in the decision of Rajdev Sharma(I). It must be noted here that the Revision Applications were filed in this Court on 14th March, 2002. Thus, the Revision Applications were pending on the date on which decision of the Apex Court in the case of P.Ramchandra Rao was delivered on 16th April, 2002. In paragraph No.37 of the majority judgment in the case of P.Ramchandra Rao, the Apex Court observed that decision shall not be a ground for re-opening the case of proceeding by setting aside any acquittal or discharge based on the case of Rajdev Sharma and which has achieved finality. Therefore, as these Revision Applications were pending on the date on which case of P.Ramchandra Rao was decided, the impugned orders of the Trial Court had not attained or achieved finality.

6. Turning to the facts of the case in Revision Application No.98 of 2002, the perusal of roznama shows that on 11th June, 1993 plea of the accused persons was recorded after framing of the charge. Thereafter, till January, 1999, the case was fixed on about fourtytwo dates. Out of the fourty-two dates, on 12 dates both the accused persons were absent. On nine other dates, the accused No.2 was absent and on eight dates accused No.1 was absent. Perusal of the roznama further shows that for the first time on 22nd June, 1998, two prosecution witnesses were present. On that day, both the accused persons were present. However, trial could not proceed as the learned Trial Judge was on leave. On the next date i.e. on 17th July, 1998 out of two witnesses, only one Shri Kulkarni was present and both accused persons were present. On 14th August, 1998 exemption was granted to the accused No.1 but the accused No.2 was present. On that day evidence of P.W.1 Shri Gendi was recorded. On the next date on 07th September, 1998 evidence could not proceed further as certain documents were produced by the prosecution. The recording of evidence was completed of P.W.1 Shri Gendi on 16th November, 1998. ON 02nd December, 1998 evidence of P.W.2 was recorded. On the same day order was passed by the learned Trial Judge on Application made by the

accused persons for closing the evidence. Thereafter, the learned Judge proceeded to record the statement under section 313 of the said Code and on 29th January, 1999 he delivered a detailed judgment acquitting the Respondent Nos.1 and 2 on merits.

7. The case of the prosecution is that the Respondent No.1 was arrested for appearing for the examination of Range Forest Officers in September, 1998 and for examination of Police Sub Inspector in October, 1998 under the bogus name. The allegation is that the accused No.1 appeared for the Police Sub Inspectors examination in September, 1987 under the bogus name of Amrut Sarjerao Bajre in order to help the accused No.2 Sunil Sadashiv Bajre who was selected for the post of Police Sub Inspector. It appears that it is an admitted position that though the accused persons appeared for the said examination for selection in the posts of Police Sub Inspector, the accused No.1 appeared in the name of Amrut Sarjerao Bajre. It must be noted here that only one witness namely the hand-writing expert was not permitted to be examined by the learned Trial Judge. The learned Magistrate on consideration of evidence of the P.W.1 and P.W.2 has recorded a finding that merely because the Examination Role number of the accused No.1 was

0046 and Examination Role number of the accused No.2 was 0047, it cannot be said that the accused No.1 appeared in bogus name to help the accused No.2. The learned Magistrate held that even assuming that the accused No.1 indulged impersonation, he has not secured recruitment to the post. After considering the evidence of P.W.1 and P.W.2, the learned Judge recorded a finding of fact that there was no evidence to substantiate the allegation that the accused No.1 appeared for examination in a different name with a view to help the accused No.2. The learned Magistrate has taken a view that even assuming that the accused No.1 appeared in the name of Amrut Sarjerao Bajre he has committed no offence. Perusal of the notes of evidence and impugned Judgment and Order shows that the findings of the learned Magistrate are based on the evidence on record. In my view, considering the findings of fact recorded by the learned Trial Judge on the basis of oral evidence led by the prosecution, no interference is called for. There is substance in the submission of the Advocate for the Petitioner that the decision in the case of Rajdev Sharma(I) is no longer good law and therefore, order of the learned Trial Judge directing closure of the evidence of the prosecution is bad in law considering the observations made by the Apex Court in the case of P.Ramchandra

Rao. This is a case where only one witness i.e. a handwriring expert remained to be examined. If findings of fact based on oral and documentary evidence on record are perused, even accepting the correctness opinion of the handwriting expert, it is difficult to find fault with the said findings. No case is made out for interference in Revision Application and this Revision Application deserves to be rejected.

8. Now turning to the Revision Application No.99 of 2002, the roznama shows that charge was framed on 09th July, 1993 and plea of the accused persons was recorded. On the very day, summons was issued to P.W.1. The roznama of the proceedings shows that except on 06th August, 1993 and 08th October, 1993 till the conclusion of the trial, on all the dates fixed, more than one accused persons always remained absent. On number of ocassions the learned Trial Judge had to pass orders of issuing non-bailable warrants and consequently number of Applications were filed for cancellation of warrants. Infact, from 04th February, 1994 to 15th May, 1998 almost on all dates the trial could not proceed because more than one accused persons remained absent. On 22nd June, 1998, both the prosecution witnesses were present. However,

the learned Trial Judge was on leave. On 03rd Agusut, 1998, both the witnesses were present. However, three accused persons were absent. The trial did not proceed on that day. On 10th September, 1998 two accused persons were absent and an Application was made on behalf of some of the accused for discharge and therefore, trial did not proceed. On 13th November, 1998, the case was adjourned to enable the prosecution to file reply to the application for discharge. On the next date i.e. on 16th December, 1998 accused persons applied for closing the prosecution case and on the date thereafter i.e. on 15th January, 1999 the Application was allowed and the accused were acquitted for want of evidence. Clause (iv) of paragraph No.16 in the case of Rajdev Sharma(I) becomes relevant in this case. Perusal of the roznama shows that inability to complete the prosecution within the period prescribed by clause (iii) is entirely attributable to the conduct of the accused persons in protracting the trial. Due to frequent absence of more than one accused persons on practically every date, lot of time was spent on issuing warrants for securing presence of the accused persons. Therefore, even going by the decision of the Apex Court in the case of Rajdev Sharma(I), the Court was not obliged to close the prosecution evidence.

Thus, the order impugned is contrary to the decision of the Apex Court in the case of Rajdev Sharma(I).

9. This Revision Application has been filed by the original complainant. At the instance of the original complainant, while exercising powers under section 401 of the said Code, order of remand can always be passed. The offence alleged is of a serious nature involving the forgery and cheating by impersonation in the examination conducted by the Maharashtra Public Service Commission. In my view, the impugned order deserves to be quashed and set aside and the case deserves to be remanded to the Trial Court for trial.

10. In Criminal Revision Application 100 of 2002 the charge was framed on 09th July, 1993 and the plea was recorded. On the next date i.e. on 06th August, 1993, prosecution witnesses were not present. On 04th February, 1994 on the Application made by the accused persons, the prosecution was directed to deliver certain documents to the accused persons. Thereafter from 25th March, 1994 till 23rd January, 1998 more than one accused persons always remained absent. On many of the dates fixed in trial, Applications for exemption were not made on behalf of the absent

accused persons. On 23rd January, 1998, the learned Trial Judge issued summons to prosecution witnesses. On 06th March, 1998 i.e. on date fixed for return of witness summons, the accused Nos.1 and 3 were absent and their Advocate applied for exemption. As the Advocate was not willing to go on with the matter, exemption Application was rejected and warrant was ordered to be issued against the absent persons. On 09th March, 1998, Application was made for cancellation of warrant. On 31st March, 1998 the warrant was cancelled and witness summons was issued. On the next date i.e. 12th May, 1998 four accused persons were absent and therefore, non-bailable warrants were ordered to be issued. On 15th May, 1998 and 19th May, 1998 though the next date was fixed as 22nd June, 1998, the case was taken on board at the instance of the accused persons for considering the prayer for cancellation and/or stay of warrant. On 19th May, 1998, warrant was cancelled subject to payment of costs. On 22nd June, 1998 the case could not proceed though two witnesses were present as the learned Judge was on leave. On the next date i.e. on 3rd August, 1988 the case did not proceed though a witness was present. On that day, three accused persons were absent. On 10th September, 1998, Application was made for discharge by some of the

accused persons and the case was adjourned for filing reply to the discharge application. It must be noted at this stage that the Judgment of the Apex Court in case of Rajdeo Sharma-I was delivered on 8th October 1998. Till that date the trial was delayed due to the conduct of the accused persons. On 13th November, 1998 time as granted to the State of file reply. On the next date i.e. 16th December, 1998 some of the accused persons applied for closing the prosecution case on which impugned order was passed on 15th January, 1999. Thus, in this case clause (iv) of paragraph No.16 in the decision of the Rajdev Sharma(I) will apply, as the inability of the prosecution to complete the trial within the period fixed by the said decision can be certainly attributable to the conduct of the accused persons.

11. In this view of the matter, the impugned order could not have been passed even by applying the decision in the case of Rajdev Sharma(I). Therefore, the impugned order deserves to be quashed and set aside and the case deserves to be remanded to the Trial Court.

12. Hence, I pass the following order:

: O R D E R :

CRIMINAL REVISION APPLICATION NO.98 OF 2002

i) Revision Application is rejected.

CRIMINAL REVISION APPLICATION NO.99 OF 2002

i) The impugned Judgment and Order is quashed and set aside.

ii) The learned Trial Judge will proceed with the hearing of the Criminal Case No.100/P of 1993 in accordance with the law from the stage at which it was pending on the date of passing of the impugned order. Trial should be concluded as expeditiously as possible.

iii) All contentions of the parties on merit are kept open.

CRIMINAL REVISION APPLICATION NO.100 OF 2002

i) The impugned Judgment and Order is quashed and

set aside.

ii) The learned Trial Judge will proceed with the hearing of the Criminal Case No.101/P of 1993 in accordance with the law from the stage at which it was pending on the date of passing of the impugned order. Trial should be concluded as expeditiously as possible.

iii) All contentions of the parties on merit are kept open.

JUDGE